

## REMARKS

Claims 1-35 are pending in the present Application. Claims 1, 13, 14 and 23 have been amended. Claim 35 has been newly added. Applicants have noted and carefully studied the Examiner's comments and the cited art. Applicants respectfully traverse the rejections and request reconsideration. Applicants believe that the present Application is now in condition for allowance, which prompt and favorable action is respectfully requested.

### Amended Claims

Claims 1, 13, 14 and 23 have been amended to more accurately claim the subject matter that Applicants regard as the invention. Applicants submit that the new language in the amended claims do not include new matter. Applicants submit that such claims are allowable at least because of Applicants' arguments highlighting the explicit and inherent differences between Applicants' claimed subject matter and that disclosed by the cited reference as well as that known to those of ordinary skill in the art, and therefore that the claimed subject matter therein is neither anticipated, nor is it obvious in light of such reference or in light of that known to those of ordinary skill in the art. As such, Applicants also request the removal of the pending rejections and the allowance of the claim.

### Claims 1-5, 10, 13-17, 22-26, 31 and 34 (103a Rejections)

The Office Action has rejected claims 1-5, 10, 13-17, 22-26, 31 and 34 under 35 U.S.C. 103(a) as being allegedly unpatentable over Puhl in view of Waite.

### Puhl

Applicants submit that Puhl discloses a system to secure wireless electronic-commerce with digital product certificates and digital license certificates, (title). The system utilizes a

system for obtaining access to software for a wireless device where a “user connects to web server 16 (or 1-800 number), follows instructions to purchase additional options for the phone, and waits a short time for the software to be downloaded, or enabled,” (col. 7, lns. 51-54). Applicants note that web server 16 connection, as shown in FIG. 1., is accessed by the user through a land based connection (PSTN) to a computer 13 via an “internet connection” (col. 2, lns. 49), and, alternatively, such server is accessed indirectly through the 1-800 number where the user uses “a conventional telephone 12 to talk with an operator,” (col. 2, lns. 49-50). Further, in response to the purchase described above, the system operates such that a “License Certificate is made available to the phone to download,” (col. 6, lns. 32-33). The system further operates generally such that “the phone’s boot software validates ... all of its License Certificates ... [, where,] [i]f they match then the phone is allowed to operate the software products identified in the License Certificate,” (col. 6, lns. 5-11).

As such, Applicants submit that Puhl is directed to a system where applications are requested via an internet or voice connection, and where, in response, license information is sent to a wireless phone to be used to validate the user of such related software. Further, such system operates such that at boot time the wireless phone determines what software applications are currently licensed to be used by the user of the phone.

### **Waite**

Applicants submit that Waite discloses a system to securely activate personal computer software at remote locations, (title). The system involves a “registration shell program [being] executed when the user first attempts to execute the product application program,” (col. 2, lns. 66-68), and where such “registration shell ... prompts the potential licensee to register as a user,” (col. 3, lns. 1-4). Then, the “registration shell ... transmits the registration request file to ... the central registration computer,” (col. 3, lns. 24-30), the “registration system assembles the ...

overlay file 38 for transmission to the registration shell of the personal computer,” (col. 3, lns. 57-60). “Upon receipt ... the registration shell program ... installs the ... overlay file,” (col. 3, lns. 65-68). “After registration, ... the ... overlay file [may be used on the PC] to load a complete product application program for execution each time the product application program is run,” (col. 4, lns. 8-13).

As such, Applicants submit that Waite discloses the transfer of license related information to a PC where such information stored on the PC is utilized by the PC each time the application is attempted to be run thereon, and as such Waite does not disclose, teach or suggest the potentially repetitive operation of retrieving a remotely stored license on each attempted execution of the related application.

**Acknowledgement Of What Puhl Doesn’t Disclose, Teach or Suggest**

Applicants acknowledge the Office Actions’ statement that “Puhl does not teach the software application requiring a license for each execution of the software application, and upon the attempted execution of a software application, the wireless device determining if a license is present to execute the software application.”

**Independent Claim 1**

Applicants further submit that neither Puhl nor Waite disclose, teach or suggest, whether considered alone, or in combination, at least Applicants’ claimed subject matter including, inter alia,

“... upon the attempted execution of a software application on the wireless device for which a license is not present, the wireless device selectively prompting the application managing server for transmission of a license, receiving the transmitted license, and installing the license on the wireless device such that the licensed software application is executable,”

(claim 1),

**Puhl TEACHES AWAY From A Device Prompting An Application Manager Server**

**Puhl Discloses Sending License Information In Response To A Server Generated Request Rather than In Response To A Wireless Device Generated Request**

Applicants submit that Puhl teaches away from Applicants' claimed subject matter where Puhl discloses a system, with respect to the transfer of license information, where such license information is generated by a request from a server rather than by a request from a wireless device scenario. Applicant submits that the system disclosed in Puhl, that requires the generation of a license based upon a transaction between a non-wireless device entity (i.e., a landline telephone 12 or computer 13 via a PSTN)(See Fig. 1), where the license information is not retrieved by a wireless device in response to an attempt to execute associated software, is wholly unlike Applicants' claimed subject matter.

More specifically, Applicants submit that Puhl discloses a system that provides access to software to wireless devices such that a "user connects to web server 16 (or 1-800 number), follows instructions to purchase additional options for the phone, and waits a short time for the software to be downloaded, or enabled, [by the server]" (col. 7, lns. 51-54). Applicants also note Puhl discusses that a "server contains the order entry system ... [where] [o]rders may be taken online through the Web, or by phone via an operator. The Web server then sends a request to [a Certificate Authority] for a new License Certificate. The CA sends the License Certificate to the device ... [such that t]he device now holds the new License Certificate and has been authorized to use the new software. (col. 2, lns. 18-28).

Applicants submit that the fact that Puhl discloses a system where the server appears is the entity that initiates the transfer of license information to a wireless device, and where Puhl does not appear to disclose a process where such request for license information is initiated from

a wireless device, that such system not only is wholly unlike Applicants' claimed subject matter, and in fact, teaches away from Applicants claimed subject matter.

**Waite Teaches Away From A Wireless Device Prompting A Server For License Information In Response To An Attempted Execution Of Associated Software**

**Waite Discloses Checking For License Information On The Wireless Device Itself, Not Requesting Such Information From A Remote Server**

Applicants submit that Waite teaches away from Applicants' claimed subject matter where Waite discloses a system, where a registration process is initiated upon the first execution of a software application, and where generated license information is transmitted to a personal computer to be accessed upon execution (at the PC) of the associated program. More specifically, Waite discloses that on a PC, a "registration shell program is executed when the user first attempts to execute the product application program," (col. 2, lns. 66-68), here, the program "prompts the potential licensee to register as a user," (col. 3, lns. 1-4), the "registration shell ... [then] transmits the registration request file to ... the central registration computer," (col. 3, lns. 24-30). At the central registration computer the "registration system assembles the ... overlay file 38 for transmission to the registration shell of the personal computer," (col. 3, lns. 57-60). "Upon receipt ... the registration shell program [at the PC, the PC] ... installs the ... overlay file," (col. 3, lns. 65-68). "After registration, ... the ... overlay file [may be used on the PC] to load a complete product application program for execution each time the product application program is run," (col. 4, lns. 8-13).

As such, what Waite appears to disclose is a registration procedure based on an initial attempt to execute a particular application, and any associated license information is subsequently accessed locally on a PC when such application is attempted to be executed on the PC. Applicants submit that such a process where the license information is located on the device

itself, there is no need to seek remotely licensing information that is available locally, and as such Applicants submit that Waite thereby teaches away from Applicants' claimed subject matter.

**Obviousness Requirements Not Met**

Applicants note that in order for prior art references to be combined by obviousness, at a minimum, there must be a suggestion of desirability for the modification. Applicants submit that neither Puhl nor Waite disclose, teach or suggest the desirability for modification, explicit or otherwise. In addition, there must be a teaching or suggestion to make the combination and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. Further, Applicants note that the level of skill in the art cannot be relied upon to provide the suggestion to combine references. Additionally, since none of the cited references disclose, teach or suggest "... upon the attempted execution of a software application on the wireless device for which a license is not present, the wireless device selectively prompting the application managing server for transmission of a license ..." or "... upon the attempted execution of a software application on the wireless device for which a license is not present, the wireless device ... receiving the transmitted license ... ," or "upon the attempted execution of a software application on the wireless device for which a license is not present, the wireless device ... installing the license on the wireless device such that the licensed software application is executable," (claim 1), the combination of any of the cited references cannot produce the Applicants' invention as claimed.

Further, Applicants respectfully submit that the Office Action uses improper hindsight reasoning by suggesting it would have been obvious to modify Puhl and/or Waite to achieve Applicants' claimed subject matter, where the Office Action, using impermissible hindsight, bases such arguments only upon the teaching or suggestion within Applicants' own disclosure. Applicants submit that there must be some suggestion or motivation, either in the reference itself,

or in the knowledge of generally available to one of ordinary skill in the art, to modify the reference as described. Further, to the extent that the Office Action relies on a position that modifications of Puhl and/or Waite to meet the claimed invention would have been within the ordinary skill of the art at the time Applicants' invention was made, because the references, and/or the knowledge of one skilled in the art, were individually known to those of skilled in the art, is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Applicants submit that if one of ordinary skill in the art at the time of Applicants' invention were to read Puhl and/or Waite such a person would not be in possession of Applicants' claimed subject matter.

#### Dependent Claim 2

Applicants submit that for at least the reason that claim 2 (dependent claim) depends from claim 1 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

#### Dependent Claim 3

Applicants submit that for at least the reason that claim 3 (dependent claim) depends from claim 1 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

#### Dependent Claim 4

Applicants submit that for at least the reason that claim 4 (dependent claim) depends from claim 1 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for

at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 5

Applicants submit that for at least the reason that claim 5 (dependent claim) depends from claim 1 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 10

Applicants submit that for at least the reason that claim 10 (dependent claim) depends from claim 1 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Independent Claim 13

Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 13 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Independent Claim 14

Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons



mentioned therein, that claim 13 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Dependent Claim 15

Applicants submit that for at least the reason that claim 15 (dependent claim) depends from claim 14 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 16

Applicants submit that for at least the reason that claim 16 (dependent claim) depends from claim 14 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 17

Applicants submit that for at least the reason that claim 17 (dependent claim) depends from claim 14 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 22

Applicants submit that for at least the reason that claim 22 (dependent claim) depends from claim 14 (parent claim), and as a dependent claim therefrom, the dependent claim is

allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Independent Claim 23

Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 23 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Independent Claim 24

Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 24 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Dependent Claim 25

Applicants submit that for at least the reason that claim 25 (dependent claim) depends from claim 24 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 26

Applicants submit that for at least the reason that claim 26 (dependent claim) depends from claim 24 (parent claim), and as a dependent claim therefrom, the dependent claim is

allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claim 31

Applicants submit that for at least the reason that claim 24 (dependent claim) depends from claim 24 (parent claim), and as a dependent claim therefrom, the dependent claim is allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Independent Claim 34

Applicants direct the Examiner's attention to the arguments presented above regarding the allowability of claims Independent Claim 1, and submit, that for at least the same or similar reasons mentioned therein, that claim 34 is also allowable. Applicants also submit that in addition to such reasons, such claim is also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in claim 1.

Claims 6-9, 18-21 and 27-30 (103a Rejections)

The Office Action has rejected claims 6-9, 18-21 and 27-30 under 35 U.S.C. 103(a) as being allegedly unpatentable over Puhl in view of Waite and in further view of an examiner's official notice allegedly evidenced by Hershey, Wolf and Danieli.

**Acknowledgement Of What Puhl Doesn't Disclose, Teach or Suggest**

Applicants acknowledge the Office Actions' statement that neither Puhl or Waite suggest in detail finite duration licenses.

Dependent Claims 6-9

Applicants submit that for at least the reason that claims 6-9 (dependent claims) depend from claim 1 (parent claim), and as a dependent claims therefrom, the dependent claims are allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claims are also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claims 18-21

Applicants submit that for at least the reason that claims 18-21 (dependent claims) depend from claim 14 (parent claim), and as a dependent claims therefrom, the dependent claims are allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claims are also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Dependent Claims 27-30

Applicants submit that for at least the reason that claims 27-30 (dependent claims) depend from claim 26 (parent claim), and as a dependent claims therefrom, the dependent claims are allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claims are also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

Claims 11, 12, 32 and 33 (103a Rejections)

The Office Action has rejected claims 11, 12, 32 and 33 under 35 U.S.C. 103(a) as being allegedly unpatentable over Puhl in view of Waite and in further view of an examiner's official notice.

**Acknowledgement Of What Puhl Doesn't Disclose, Teach or Suggest**

Applicants acknowledge the Office Actions' statement that Puhl does not specifically indicate that the wireless device is a personal digital assistant or pager.

**Dependent Claims 11-12**

Applicants submit that for at least the reason that claims 11-12 (dependent claims) depend from claim 1 (parent claim), and as a dependent claims therefrom, the dependent claims are allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claims are also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

**Dependent Claims 32-33**

Applicants submit that for at least the reason that claims 32-33 (dependent claims) depend from claim 24 (parent claim), and as a dependent claims therefrom, the dependent claims are allowable for at least the reasons for which the parent claim is allowable. Applicants further submit that the dependent claims are also allowable in light of the presence of novel and non-obvious elements contained therein that are not otherwise present in the parent claim.

**New Claim 35**

Applicants direct the Examiners attention to the arguments made above, particularly those arguments associated with independent claim 1 and submit for the same, or similar reasons, that new claim 35 is allowable as written, and as such, Applicants respectfully request the allowance of the new claim.

## CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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